MOTION FILED FEB 25 1950

IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 248

JOHN HOWARD LAWSON,
Petitioner,

against

UNITED STATES OF AMERICA,
Respondent.

No. 249

DALTON TRUMBO,
Petitioner,

against

UNITED STATES OF AMERICA,
Respondent.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS IN THE DISTRICT OF COLUMBIA

MOTION FOR LEAVE TO FILE AND BRIEF *AMICI CURIAE* SUBMITTED ON BEHALF OF PUBLISHERS, WRITERS AND PLAY PRODUCERS

ZECHARIAH CHAFEE, JR.
Of the Rhode Island Bar

OSMOND K. FRAENKEL
ARTHUR GARFIELD HAYS
Of the New York Bar
Counsel for Amici Curiae

Co., Inc., 82 Beekman St., N. Y.—BEekman 3-9084-5-6 182

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Motion for Leave to File Brief as *Amici Curiae*

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The undersigned, as counsel for the publishers and writers of books and the producers and writers of plays listed in the accompanying brief, respectfully moves this Court for leave to file same as a brief *amici curiae.*

Motion for Leave to File Brief as Amici Curiae

The petitioners in these cases raise serious questions concerning censorship of the motion picture screen. Those on whose behalf this brief is filed, concerned with the integrity of other media of mass communication, believe themselves to have a special and professional interest in the issues here presented. The accompanying brief suggests that where the effect of a Congressional investigation is to restrain the free expression of ideas, as the Government here assumes the fact to be (Resp. Br., pp. 16-18), the courts, before lending their active support to the investigative process, have at least the responsibility of determining whether the investigation has the imposition of such restraints for its intended object as well as for its inescapable effect.

The consent of the respondent to the filing of this brief has been sought, but not obtained.

Dated: New York, N. Y.
February 24, 1950.

Signed: Osmond K. Fraenkel
Counsel for Amici Curiae

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BRIEF *AMICI CURIAE* SUBMITTED ON BEHALF OF PUBLISHERS, WRITERS AND PLAY PRODUCERS

This brief is offered on behalf of the publishers and writers of books and the producers and writers of plays listed below, who believe themselves to have a special and professional interest in issues which your petitioners, craftsmen in allied arts, now present to the Court for decision:

Publishers

Lee Barker
Douglas Black
George Braziller
Angus Cameron
Bennett Cerf
Jack Goodman
Robert Haas
Bert Hoffman
Storer Lunt
Mrs. Julian Messner
Stanley Salmon
James W. Sherman
Arthur Thornhill
Richard Walsh
Arthur Williams

Writers

Joseph Barnes
Jack Belden
Roger Butterfield
John Hersey
Richard Lauterbach
S. J. Perlman
William Shirer
Edgar Snow
James P. Warburg
Mitchell Wilson
Ira Wolfert

Playwrights and Theatrical Producers

Cheryl Crawford
Arthur Miller
Elmer Rice
Lee Sabinson
Irwin Shaw
Mrs. Robert Whitehead

The above believe that the kind of proceedings before the House Committee on Un-American Activities involved in these two cases effectively restrains, in ways both direct and indirect, the free creation and communication of ideas. Directly involved in this case is a threat to censor the content of motion pictures and to exercise controls over the employment of writers and artists in the motion picture industry which are unrelated to their creative work. Other forms of communication, including books and the stage, are threatened with similar interference from the same and like quarters. Those on whose behalf this brief is filed respectfully ask this Court to agree to consider now whether the motion picture screen, the theatre, the radio, our books and our public halls must constitutionally be left to suffer such intrusions.

The filing of this brief should not be taken to intimate support or sympathy with the political philosophies, whatever they may be, of the two petitioners before the Court. The decisions in question threaten the freedom of those of different as well as like mind. Your *amici* have firm faith that in the preservation of civil liberties lies the only guarantee that this country will never fall under a dictatorship of the right or the left, to both of which they are equally and irrevocably opposed.

The restraints upon freedom of expression involved in these cases are engineered by a simple circumlocution—those who desire to do what the Constitution forbids them to do by statute exploit the repressive possibilities of the technique of investigation so as to accomplish indirectly what they cannot do directly. This is not the first case in which this Court has had to look behind the disguise to find prohibited censorship. When Huey Long was warring with the newspapers, Louisiana imposed a gross receipts tax upon their revenues. The Court held the tax unconstitutional because

> "in the light of its history and its present setting, it is seen to be a deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public is entitled in virtue of the constitutional guarantees." *Grosjean* v. *American Press Co.*, 297 U. S. 233, 250.

And when the Postmaster General, charged with the duty of issuing second class mail permits, claimed large discretionary power to withhold such permits on the ground that he was dispensing government subsidies, the Court denied him the power as involving "a radical departure from our traditions." *Hannegan* v. *Esquire*, 327 U. S. 146, 156.

Assuming that the power of the courts is to be invoked to compel witnesses subpoenaed before a Congressional committee to reveal the details of their private beliefs and so inhibit others in the free expression of their own, we

think the courts must accept the responsibility of deciding whether the Congressional committee is in fact acting beyond its powers and for an improper purpose. That the power to inquire is subject to abuses, dangerous to the civil and political rights of the people (even at the hands of legislative bodies) is, we think, a matter of history. It is also history that such abuses may perpetuate themselves by inhibiting opposition to the public officials guilty of the abuses. It remains for this Court to insure that the power of Congress to investigate, like the power to legislate, is kept within constitutional bounds, and not permitted to be used as the concealed weapon of censorship of the means of communication.

Respectfully submitted,

ZECHARIAH CHAFEE, JR.
Of the Rhode Island Bar

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ARTHUR GARFIELD HAYS
Of the New York Bar
Counsel for Amici Curiae